

MINUTES
SCOTTSDALE CITY COUNCIL
CITY COUNCIL MEETING
Tuesday, November 18, 2003

**The Kiva
City Hall
Scottsdale, Arizona**

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Call to Order

Mayor Manross called to order the Regular Meeting of the Scottsdale City Council on Tuesday, November 18, 2003 in the Kiva, City Hall, at 5:03 P.M.

Roll Call

Present: Mayor Mary Manross
Vice Mayor Wayne Ecton
Council Members David Ortega, Tom Silverman
Robert Littlefield and Ned O'Hearn

Once the oath of office was administered, Councilwoman Roberta Pilcher joined the Council.

Also Present: City Manager Jan Dolan
City Attorney Brad Woodford
City Clerk Carolyn Jagger

Announcement

Mayor Manross urged citizens to donate to the Vista del Camino Adopt-A-Family program during the holiday season.

Swearing-in of Newly Appointed Council Member

Judge Morgan swore in Roberta Pilcher as a City Council Member.

Minutes

COUNCILMAN SILVERMAN MOVED FOR APPROVAL OF THE SPECIAL MEETING MINUTES OF 10/27/03, THE REGULAR MEETING MINUTES OF 10/20/03, AND THE EXECUTIVE SESSION MINUTES OF 10/27/03. VICE MAYOR ECTON SECONDED THE MOTION WHICH CARRIED 7/0.

Public Comment

Lyle Wurtz, 6510 E Palm Ln, 85257, expressed displeasure that the recommendations of the Citizen Budget Committee and Districting Committee were not followed by the city.

Consent Agenda Items 1 - 9

- 1. Desert Mountain Club Extension of Premises**
Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a permanent extension of premises which will add a permanent clubhouse and the Outlaw golf course to the licensed premises.

Location: 10550 E Desert Hills Dr

Reference: 31-EX-2003

Staff Contact(s): Robert Bushfield, Development Review and Permit Services Director,
480-312-7096, rbushfield@ScottsdaleAZ.Gov

2. Mes Amis Bistro/Bar Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license for a location which is currently operating with a series 12 license under the business name Sunflower Cafe.

Location: 7704 E Doubletree Ranch Rd

Reference: 79-LL-2003

Staff Contact(s): Robert Bushfield, Development Review and Permit Services Director,
480-312-7096, rbushfield@ScottsdaleAZ.Gov

Responding to Vice Mayor Ecton, Mr. Ekblaw said there was an error on the application and the applicant would not be providing live music and dancing at this location.

3. The Pick Six Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 07 (beer/wine bar) State liquor license for a new location.

Location: 10855 N Frank Lloyd Wright Blvd

Reference: 80-LL-2003

Staff Contact(s): Robert Bushfield, Development Review and Permit Services Director,
480-312-7096, rbushfield@ScottsdaleAZ.Gov

4. Renaissance Scottsdale Resort Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 11 (hotel/motel) State liquor license for an existing resort.

Location: 6160 N Scottsdale Rd

Reference: 81-LL-2003

Staff Contacts: Robert Bushfield, Development Review and Permit Services Director,
480-312-7096, rbushfield@ScottsdaleAZ.Gov

5. Chevron Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 10 (beer/wine store) State liquor license for an existing convenience store.

Location: 11425 E Via Linda

Reference: 82-LL-2003

Staff Contact(s): Robert Bushfield, Development Review and Permit Services Director,
480-312-7096, rbushfield@ScottsdaleAZ.Gov

6. Sidewinder's Grill Liquor License

Request: Consider forwarding a favorable recommendation to the Arizona Department of Liquor Licenses and Control for a series 12 (restaurant) State liquor license for an

existing location, which previously operated with a series 12 license under the business name Buster's.

Location: 10999 N Frank Lloyd Wright Blvd.

Reference: 83-LL-2003

Staff Contact(s): Robert Bushfield, Development Review and Permit Services Director, 480-312-7096, rbushfield@ScottsdaleAZ.Gov

7. Storage Solutions Conditional Use Permit

Request: Approve a conditional use permit for internal storage in an existing building on a 1.2 +/- acre parcel located at 6900 E Thomas Road with Central Business District (C-2) zoning.

Location: 6900 E Thomas Rd.

Reference: 18-UP-2003

Staff Contact(s): Bill Verschuren, Senior Planner, 480-312-7734, bverschuren@ScottsdaleAZ.gov;

Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@ScottsdaleAZ.gov

8. Mountainside Plaza Fitness Center Conditional Use Permit

Request: Approve a conditional use permit for a health studio on a 3.5 +/- acre parcel located at 10855 N 116th Street (Northeast corner of Shea Blvd & 116th St) with Highway Commercial Planned Community District (C-3 PCD) zoning.

Location: 10855 N 116th St

Reference: 23-UP-2003

Staff Contacts: Kira Wauwie, Project Coordination Manager, 480-312-7061, kwauwie@ScottsdaleAZ.gov; Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@ScottsdaleAZ.gov

9. Maricopa County Intergovernmental Agreement for Homeland Defense Grant Funds

Request: Adopt Resolution No. 6408 authorizing the City of Scottsdale to enter into an agreement with Maricopa County to administer Domestic Preparedness grant funds.

Related Policies, References: Resolution No. 6097 and Resolution No. 6180

Staff Contact(s): Marc Eisen, Emergency Services Director, 480-312-7999, meisen@scottsdaleaz.gov; Alan Rodbell, Chief of Police, 480-312-5000, arodbell@scottsdaleaz.gov

MOTION AND VOTE - CONSENT AGENDA ITEMS 1-9

**VICE MAYOR ECTON MOVED FOR APPROVAL OF CONSENT AGENDA ITEMS 1-9.
COUNCILMAN ORTEGA SECONDED THE MOTION WHICH CARRIED 7/0.**

Regular Agenda Item 10

10. Sherwood Heights Overlay

Requests:

1. To apply the Planned Residential District (PRD) to the Sherwood Heights, Sherwood Estates and Fairway Park subdivisions to restrict the residential building height to one-story residences with a maximum height of 16 feet, as measured from the top of the existing main slab to the highest point of the roof, not including rooftop accessories, in order to preserve views and privacy.
2. To adopt Ordinance No. 3533 affirming the above Zoning Overlay.

Location: North side of Edgemont south to Oak Street from 56th Street to 60th Street

Reference: 16-ZN-2003

Staff Contact(s): Monique De Los Rios-Urban, Senior Planner, 480-312-7898, mdelos@ScottsdaleAZ.gov; Kroy Ekblaw, Planning and Development Services General Manager, 480-312-7064, kekblaw@ScottsdaleAZ.gov

Randy Grant provided background information regarding the proposed overlay. He noted that a legal protest was filed last Friday. Between last Friday and today, some names were requested to be added or removed and, as of today, it does not constitute a valid legal protest.

Responding to Councilman Ortega, Mr. Grant said Fairway Park had CC&Rs that dealt with height; however they expired in 1992. Sherwood Heights and Sherwood Estates had CC&Rs that expired, but they did not have height restrictions. CC&Rs would be an appropriate way to deal with this issue, but there was no desire to establish a homeowner's association in this neighborhood.

Billy Young, representing the applicants, said over 86% of the neighbors signed petitions in support of the proposed overlay and requested a height limitation of 16 feet to protect privacy and views. Obstructing their views would lower their property value. She thanked city staff for their help over the last two years and urged Council to support the request.

Responding to Councilwoman Pilcher, Ms. Young said the neighborhood was approaching 50 years of age and had looked into Historic designation though that was more restrictive than what they were asking.

Public testimony opened:

Peter Rez, 5935 E Cambridge, 85257, spoke in support of saving property values.

Linda Peterson, 5639 E Windsor, 85257, felt it was unfair and unrealistic to put a blanket prohibition on height or second stories. This should fall under CC&Rs and the proposed action would constitute a taking of their property rights.

Gary Witting, 5834 E Oak St, 85257, spoke in opposition because the proposed overlay would not accomplish its goals, as there are huge trees and already homes with two stories. He stated his belief that the proposed overlay is also illegal.

Terry Sewell, 2805 N 58th St, 85257, spoke in opposition saying there were other ways to accomplish the goals without these limitations.

Kathi Baldwin, 5926 E Lewis, 85257, spoke of the process the neighbors went through and thanked the Council for their thoughtfulness in visiting the neighborhood.

Bill Rieff, 5809 E Lewis, 85257, spoke in support. He showed how he had remodeled his home taking his neighbors into consideration and maintaining one story.

Diane Cusack, 5744 E Oak St, 85257, spoke in favor and of applying for historic designation as well.

Janet Sell, 5723 E Cambridge Av, 85257, discussed how the neighborhood group got to where they are today in trying to preserve the unique character of their neighborhood. She said a Homeowners Association was discussed but they are very unpopular today. CC&Rs could not be re-instituted without 100% of neighborhood approval. Tonight's action would protect property rights.

Susan Bitter Smith, 5806 E Lewis, 85257, spoke in opposition and felt there was still room for compromise and dialogue. This process has resulted in unpleasant experiences for many neighbors. She felt the city was putting itself at risk. She asked for further discussion instead of action.

Ann Burton, 5602 E Oak St, 85257, spoke in opposition and pointed out flexibility was an important factor. If her neighbor put in \$200,000 of improvements, it would also raise the value of her property. She opposed this based on good policy measures.

Tom Irvine, 1419 N 3rd St, #100, Phoenix, 85004, representing ten families who oppose this rezoning. He noted that his clients would be rezoned against their will. Individual property rights should not be sacrificed in terms of a group ideal. This would be one of the most massive down-zonings in Arizona history. He suggested that the 85% in favor could deed restrict themselves. He urged the Council not to support this.

Frank Bixby, 5618 E Oak St, 85257, spoke in opposition and noted how he bought in Sherwood Heights rather than Fairway Heights because of height restrictions there. He wants to add a partial second story some day that would not obstruct anyone's view.

Additional comment cards received from citizens not wishing to speak: 14 in favor; 4 in opposition.

Ms. Young followed up on some issues. Measuring from the existing slab for the 16-foot building height, because of rolling topography, would create a level playing field. In regard to vegetation, aesthetics are very different than with a house. She also commented on some of the legalities presented by Mr. Irvine.

Mr. Woodford responded to Mr. Irvine's opinions regarding this overlay and said his office believes the overlay is allowed by state law to vary the heights of residential buildings. Therefore, it is a proper legislative decision that can be made by this Council.

Councilman Ortega said it could cost the city to handle the defense of this issue, since both sides are represented by attorneys. Mr. Woodford said if there was a legal challenge, the city could hand off the defense of the lawsuit to lawyers representing the proponents and take a neutral position, or choose to defend their decision in an active manner. Other legal possibilities were discussed.

Councilman Littlefield said Council would be setting a precedent. He was opposed to rezoning a neighbor's property against their will, just on principle.

COUNCILMAN LITTLEFIELD MOVED FOR DENIAL OF ORDINANCE 3533. COUNCILMAN ORTEGA SECONDED THE MOTION (which failed 2/5 – MM, WE, NO, RP, and TS).

Councilman Ortega further commented on potential legal expenses to the city.

Mr. Woodford responded to Mayor Manross in regard to the PRD (Planned Residential District), saying it was originally established to allow flexibility in residential development. This PRD allows an overlay zone to be placed over a residential district. One of the items which the PRD can adjust is height of buildings, as long as it doesn't allow height to go over 30 feet. As to the allegations that if Council passed this overlay zone it would jeopardize the ESLO (Environmentally Sensitive Lands Ordinance) or Foothills Overlay, he did not see any connection between the two. They were totally separate issues.

Councilman O'Hearn felt the critical issue tonight was whether or not it was unusual or unfair for a majority of homeowners to impose restrictions on an entire neighborhood. There is no local or legal precedent. He was not intimidated by legal fees if he felt something was right. Improvement districts did not have to have 100% for approval. He believed in neighborhoods and if 86% wanted this, he would not support the motion.

Councilman Silverman recounted his observations while touring the neighborhood and homes. He envied the views and would hate to lose them. With the City Attorney saying we were in the right, he would not support the motion.

Vice Mayor Ecton understood the desire to keep the views. Furthermore, perhaps a lawsuit would be a good test. The case would set a precedent and Council needed to know how to address these issues in the future. He would not support the motion.

Mayor Manross said you only have one opportunity to preserve something and she appreciates how unique this community is. A legal challenge is not the right criteria to use in this case and the city needs to do what is right for this neighborhood. A clear majority of the residents wanted to move in this direction.

Councilwoman Pilcher said this area needed to be preserved and citizen input overwhelmingly supports the overlay.

VOTE 1 – ITEM 10

Following the discussion, THE MOTION FOR DENIAL FAILED BY A VOTE OF 2/5 WITH MAYOR MANROSS, VICE MAYOR ECTON, AND COUNCILMEMBERS O'HEARN, PILCHER, AND SILVERMAN DISSENTING.

MOTION 2 – ITEM 10

COUNCILMAN O’HEARN MOVED FOR APPROVAL OF ORDINANCE 3533. COUNCILMAN SILVERMAN SECONDED THE MOTION (which carried 5/2 – R.L., D.O.).

Mr. Woodford reiterated it is permissible for Council to set a standard to measure heights of buildings in residential areas by slab or curb or any other method they so choose. Generally in the zoning code, the measurement is from the top of curb. His opinion was that the overlay permitted Council to vary heights and this was one way of varying them.

Randy Grant clarified that ESLO sets a height from natural grade. It’s defined in the ordinance, so having different standards would create different challenges to monitor and maintain, but it certainly could be done.

Following the discussion, THE MOTION FOR APPROVAL OF ORDINANCE 3533 CARRIED 5/2 WITH COUNCILMEMBERS LITTLEFIELD AND ORTEGA DISSENTING.

Public Comment - None

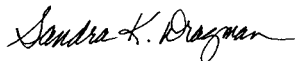
City Manager’s Report - None

Mayor and Council Items - None

Adjournment

With no further business to discuss, Mayor Manross adjourned the meeting at 7:24 PM.

SUBMITTED BY:



**Sandy Dragman
Recording Secretary**

REVIEWED BY:



**Carolyn Jagger
City Clerk**

C E R T I F I C A T E

I hereby certify that the foregoing Minutes are a true and correct copy of the Minutes of the Regular City Council Meeting of the City Council of Scottsdale, Arizona held on the 18th day of November 2003.

I further certify that the meeting was duly called and held, and that a quorum was present.

DATED this 4th day of December 2003.

CAROLYN JAGGER
City Clerk